

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	
THIS DOCUMENT RELATES TO:)	CIVIL ACTION: 01-CV-12257-PBS
ALL ACTIONS)	Judge Patti B. Saris

**B. BRAUN MEDICAL INC.'S MOTION FOR LEAVE TO FILE REPLY
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS THE SECOND
AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

Pursuant to Local Rule 7.1(b)(3), B. Braun Medical Inc. ("BBM") moves for leave to file the accompanying Reply Memorandum to plaintiffs' opposition to BBM's Motion to Dismiss the Second Amended Master Consolidated Class Action Complaint ("SAMCC").

Plaintiffs filed a memorandum in opposition to BBM's Motion to Dismiss on April 4, 2005. In that opposition, plaintiffs conceded that Count II (federal RICO) and Count IX (state civil conspiracy) cannot support this Court's subject matter jurisdiction over BBM and that those counts should be dismissed. Moreover, the plaintiffs admitted that federal question and traditional diversity-of-citizenship jurisdiction are lacking over the plaintiffs' two other claims against BBM (Counts III and IV). Yet, in an attempt to save those claims from dismissal, the plaintiffs asserted – for the first time – that the newly-enacted Class Action Fairness Act ("CAFA") amendments to 28 U.S.C. § 1332 provide a basis for asserting jurisdiction over claims that should otherwise be dismissed. Plaintiffs acknowledged that "they did not make these allegations in the SAMMC." Pls. Opp. at 5 n.3.

BBM now seeks leave to file the accompanying Reply Memorandum in support of its Motion to Dismiss the SAMCC in order to respond to plaintiffs' newly-conceived theory of subject matter jurisdiction and to correct plaintiffs' mischaracterizations of the law. In addition, this Reply Memorandum is intended to help frame the issues remaining for the Court's resolution and to better inform the Court of the parties' respective positions.

Counsel for BBM contacted plaintiffs to seek their consent to the filing of this Reply Memorandum. Plaintiffs' counsel have refused to consent to this motion.

WHEREFORE, B. Braun Medical Inc. respectfully moves that this Honorable Court grant it leave to file its Reply Memorandum in support of its Motion to Dismiss the Second Amended Master Consolidated Class Action Complaint.

Dated: April 11, 2005

Respectfully submitted,

/s/ Daniel F. Attridge, P.C.
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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for B. Braun Medical Inc. has conferred with counsel for plaintiffs and that plaintiffs do not assent to this motion.

/s/ Daniel F. Attridge, P.C.

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